



October 25, 2001

Mr. O. C. Robbins
Executive Director
Texas Funeral Services Commission
510 South Congress, Suite 206
Austin, Texas 78701-1716

OR2001-4876

Dear Mr. Robbins:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153899.

The Texas Funeral Services Commission (the "commission") received a request for several categories of information. You indicate that the commission seeks to withhold a portion of the information responsive to the request, represented by the information contained in the submitted complaint file numbered 01-103.¹ It is our understanding that the commission has released to the requestor the remaining information responsive to the request. You assert that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure information "considered to be confidential by law, either constitutional, statutory, or by judicial decision." We understand you to assert that the submitted information is confidential pursuant to an amendment by the 76th Legislature to section 6D of article 4582b of Vernon's Texas Civil

¹You indicate the submitted information comprises a representative sample. We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole that the commission seeks to withhold. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and does not authorize the withholding of any other requested records containing substantially different types of information than that submitted to this office.

Statutes, relating to the disclosure of commission complaint investigation files. *See* Act of May 24, 1999, 76th Leg., R.S. ch. 1476, § 22, 1999 Tex. Sess. Laws 5053, 5064. We find the applicable law to be section 651.203 of the Occupations Code. As amended by the Seventy-seventh Legislature and effective September 1, 2001, the relevant language of section 651.203 provides that “[i]nformation in a [complaint file], *other than information relating to a complaint that has not reached final disposition*, is public information.” *See* Act of May 22, 2001, 77th Leg., R.S., H.B. 2812, § 14.378 (to be codified at § 651.203, Occ. Code) (emphasis added). We conclude that this language makes confidential information relating to a complaint that has not reached a final disposition.

We understand from the information submitted that the complaint at issue in the present request has not yet reached final disposition. Accordingly, based on this understanding, we agree that the submitted information is confidential under section 651.203 of the Occupations Code, as amended by the 77th Legislature, and therefore must be withheld by the commission pursuant to section 552.101 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).


If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID# 153899

Enc. Submitted documents

cc: Ms. Mary Sanchez
Attorney at Law
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(w/o enclosures)